IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Shahnaj Bano & ors. Vs. Narendra Singh & anr.

S.B.CIVIL MISC. APPEAL NO.94/2001

Against the award dated 30.10.2000 made by the Motor Accidents Claims Tribunal-I Jodhpur in Claim Case No.504/1995 (91/1993).

Date of Judgment : 1st June 2007

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Rajesh Panwar with Mr. S.K.Sankhla, for the appellants.
Mr. Varun Goyal, for the respondents.

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BY THE COURT:

On 14.11.1991 at about 9:15 p.m., Mohammed Ayub Ansari (35 years), while riding his Luna moped in the city of Jodhpur and going towards Residency Road, was hit by an oncoming vehicle in front of Jodhpur Hospital and Kalpatru Cinema; and, at about 11:45 p.m., succumbed to the injuries received in the accident in Mahatma Gandhi Hospital, Jodhpur. The dependants of the victim Mohammed Ayub, sought compensation against the driver and owner of a jeep

bearing registration No. RNQ 4285, alleged to be the vehicle causing the said fatal accident. The non-applicants denied involvement of their vehicle at all in the accident. The Motor Accidents Claims Tribunal-I, Jodhpur in its impugned award dated 30.10.2000, though has assessed the loss of the claimants in the sum of Rs.3,25,000/-, but has rejected the claim application with the finding that the claimants have failed to establish that the accident occurred with involvement of the questioned jeep RNQ 4285. Aggrieved, the claimants have preferred this appeal.

The facts relevant for determination of the questions involved in this appeal could be taken in comprehension thus: The claimants, wife, children and parents of the deceased Mohammed Ayub sought compensation against the non-applicants, Narendra Singh son of Chhatar Singh Bhati and Mahipal Singh son of Chhatar Singh Bhati, both residents of B-Sector, House No.63, Shastri Nagar, Jodhpur respectively as driver and owner of the offending vehicle with the allegations in the claim application that the accident occurred at about 9:00-9:15 p.m. on 14.11.1991 near Kalpatru Cinema in front of Research Centre at Jodhpur when the deceased while riding his moped was hit by the oncoming jeep bearing registration No.RNQ 4285 driven rashly and negligently by the non-applicant No.1. The claimants alleged that the victim was

thrown on the road and sustained several injuries and despite people shouting for halt, the jeep driver sped off towards Kalpatru Cinema. Stating their entitlement to recover compensation as heirs and dependants of the deceased Mohammed Ayub, the claimants alleged that the accident was caused exclusively for the fault of the non-applicant No.1 Narendra Singh for driving the said jeep rashly and negligently and without any contribution on the part of the victim Mohammed Ayub; and that the non-applicant No.2 Mahipal Singh was under vicarious liability as owner of the offending vehicle. It was asserted in the claim application that the accident was seen by the passers-by; that upon information by one Shahadat Ali the police reached the spot after some time; and information was also given to a daily newspaper 'Rajasthan Kesari' that published such news in its edition dated 15.11.1991. The claimants further alleged that Shahadat Ali was told by the police of taking further proceedings and removing the injured to hospital; that Shahadat Ali had extended the information about driving of jeep RNQ 4285 by the non-applicant No.1 Narendra Singh but police did not take on record his information and, instead, first information was recorded on the basis of wrong information given by one Chetan Prakash in connivance with the vehicle driver and owner, in order to save them from civil and criminal liability;

and that upon noticing these facts, the claimant Abdul Gani (father of the deceased) has filed a criminal complaint that was pending in the court.

For quantification of compensation, the claimants alleged that the deceased was 35 years of age; that he was engaged in the business of trading in footwear earning about Rs.2,500-3,000/- per month and was an income tax assessee; that he had 35% partnership in Relaxo Footwear, Jodhpur, was Chairman of Ansari Juta Udyog Utpadak Sahakari Samiti Limited, was having a shop in the name of Faisal Shoe Store, Sojati Gate, Jodhpur, and was also engaged in property brokerage; and that two shops were required to be closed down after his demise resulting in substantial loss. The claimants alleged their pecuniary loss at Rs.10,50,000/- and stating other losses including funeral expenses, property damage, and loss of consortium, love, affection, guidance and services of the deceased, the claimants claimed compensation in the sum of Rs.13,60,000/-. The claim application was filed on 14.05.1992.

The non-applicants, driver and owner of the vehicle in question, submitted a common reply on 21.08.1996 stating total denial of claim averments and maintaining that no any accident was ever caused by the jeep in question that was wrongly got involved in the matter. The non-applicants though

admitted that the non-applicant No.1 was driver of the jeep in question but asserted that he never caused any accident nor took the jeep to Residency Road-Kalpatru on 14.11.1991; and that some other vehicle caused the accident. It may be pointed out that the jeep in question being not insured at the relevant time is a fact not in dispute.

On the basis of material on record, the Tribunal passed an order on 21.08.1996 allowing interim compensation under Section 140 of the Motor Vehicles Act in the sum of Rs.50,000/- to the claimants against the non-applicants. Then, the following issues were framed on 15.11.1996:-

> "(1) क्या अप्रार्थी संख्या-1 नरेन्द्रसिंह ने दिनांक 14.11.91 को रात्री के करीबन नौ -सवा नौ बजे अपना वाहन जीप सं0 आर.एन.क्यू. 4285 को कल्पतरू सिनेमा के सामने रिचर्स सेन्टर के सामने तेज गति व लापरवाही से चलाकर लूणा मोपेड पर सवार मोहम्मद अयूब के सामने से टक्कर मारकर मोटरयान दुघर्टना कारित की जिसके कारण मोहम्मद अयूब की मौके पर मृत्यु हो गई?
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> (2)क्या प्रार्थीगण उपरोक्त मोटरयान दुघर्टना में मोहम्मद अयूब की मृत्यु के ऐवज में अपने दावे में वर्णित विभिन्न आधारों पर प्रतिकर के कुल रूपये 13,60,000/- रू पाने के अधिकारी विपक्षीगण से है?
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> (3) अनुतोष क्या होगा ?"

In oral evidence, the claimants examined Shahanaj Bano, wife of deceased as PW-1; Abid Ali, an alleged eyewitness to the accident as PW-2; and Iqbal Khan, another alleged eyewitness as PW-3. The non-applicants examined the jeep driver Narendra Singh as DW-1; and the first

informant Indra Prakash as DW-2. In documentary evidence, the claimants produced certified copies of charge-sheet filed by the police on 10.07.1992 against the non-applicant No.1 Narendra Singh as Ex.1; site plan and site inspection report prepared by the investigating officer on 15.11.1992 as Ex. 2 and Ex.3 respectively; seizure memo of the jeep RNQ 4285 dated 09.07.1992 as Ex.4; seizure memo of the moped dated 15.11.1991 as Ex.5; mechanical inspection report of Luna moped dated 15.11.1991 as Ex.6; mechanical inspection report of the jeep RNQ 4285 dated 05.12.1991 as Ex.7; and post-mortem report of the victim Mohammed Ayub as Ex.8. The claimants also produced a copy of the partnership deed of Relaxo Footwear dated 06.03.1991 as Ex.9; income tax assessment order of the deceased for the assessment year 1990-1991 as Ex.10; income tax computation form as Ex.11; rent receipt in the name of deceased as Ex.12; and copy of trading account and balance-sheet of M/s. Faisal Store for eight months ended on 30.11.1986 as Ex.13. The non-applicants on the other hand produced a certified copy of the judgment dated 11.05.1999 passed in Criminal Case No.196/1992 by the Addl. Chief Judicial Magistrate No.1, Jodhpur acquitting the accused Narendra Singh for offences under Sections 279 and 304-A IPC as Ex.A/1; and a certified

copy of the statement of the witness Abid Ali (PW-2 herein) recorded in the said criminal case as Ex.A/2.

It may be pointed out that placed on record are certain other documents, which are indisputable but have not been marked exhibits in evidence like certified copy produced by the claimants of FIR No.291/1991 registered by the police at 10:15 a.m. on 15.11.1991 on the basis of the statements of the witness Indra Prakash (DW-2 herein) as recorded by SI Karan Singh at Jodhpur Hospital at about 09:30 a.m. on 15.11.1991; and like certified copy produced by the non-applicants of the statement of the same witness Indra Prakash as recorded on 22.01.1997 in the said criminal case. These certified copies remain indisputable, and though not marked exhibits, their value and relevance shall be examined later.

It may also be pointed out at this juncture that the basic controversy in this case has been relating to the identity of the vehicle that fatally wounded Mohammed Ayub. Admittedly, the vehicle in question was not found at the site. The claimants alleged the offending vehicle to be the jeep bearing registration No. RNQ 4285 driven by the non-applicant No. 1 and belonging to the non-applicant No. 2; and in support of their such assertion relied, inter alia, on the statements of PW-2 Abid Ali and PW-3 Iqbal Khan, allegedly the eyewitnesses to the incident and allegedly having noted down the registration

number of the offending vehicle. On the other hand, the non-applicants, in their reply denied involvement of their vehicle in the accident in question; and in evidence examined another alleged eyewitness and the first informant DW-2 Indra Prakash who asserted that the accident was caused by an Ambassador car occupied by three persons. It may also be pointed out that the claimants alleged in their claim application that the police did not take the information given by one Shahadat Ali at the site on record and, instead, the case was registered with reference to a wrong report obtained from one Chetan Prakash in order to save the non-applicants as the relatives of the non-applicant Narendra Singh were serving in police. This name Chetan Prakash is an obvious error in the claim application, because no such name appears in the investigation papers or any other evidence; and, admittedly, the FIR was registered on the statement of Indra Prakash, who has been examined as DW-2 in this case.

Learned Judge of the Tribunal, after noticing the pleadings and issues, has referred to the evidence adduced by the parties and their contentions and then has noticed the shortcomings, lacunae, and discrepancies in the case of the claimants thus: (a) that one Shahadat Ali was named as eyewitness in the claim application but he was not examined in evidence; (b) that PW-2 Abid Ali in his statement before

the criminal court (Ex. A/2) gave out registration number of the offending vehicle as RNJ 4285 whereas before the Tribunal he stated the registration number as RNQ 4285; (c) that PW-2 Abid Ali alleged that Luna rider died on the spot but PW-3 Iqbal Khan stated that the victim was taken to the hospital unconscious and the challan Ex.1 stated that the victim was lying on the road when police visited the site and he was got admitted to Mahatma Gandhi Hospital and, therefore, there was discrepancy about the time of death; (d) that it did not appear probable that the jeep came back and then its numbers were noted by Abid Ali as alleged, because he was proceeding in the opposite direction and then, he did not divulge the numbers immediately or the next day; (e) that the witness PW-3 Iqbal Khan was neither examined by the police nor before the criminal court and he has alleged the victim to have been taken to Jodhpur Hospital and doctor having stated his demise and his statement of having noted down the number of the jeep was not trustworthy.

The learned Judge has also referred to the statement of the first informant, DW-2 Indra Prakash and noted: (a) that it was clear that he had given information to the police and on that basis alone the matter was proceeded with and he had given out that the accident was caused by an Ambassador car; (b) that according to the police he did not divulge his name at

the time of extending information on telephone and stated in the report (FIR) that after extending such information he had gone home on completion of his duty; whereas he maintained before the Tribunal that he was on night duty in Jodhpur Hospital and continued on duty till 12 O'clock next day and that the police came in the morning; (c) that according to PW-3 Iqbal Khan and DW-2 Indra Prakash the injured was taken to hospital but according to the police the injured was lying on the road and he was got admitted to Mahatma Gandhi Hospital and these were different versions and it was not clear as to which one was correct? The learned Judge has, however, observed that even if there were some discrepancy in the testimony of Indra Prakash, it was clear that he had firstly given out the information of accident and stated that the accident was caused by an Ambassador car.

The learned Judge has, thereafter, referred to the fact that the criminal case relating to the accident in question was concluded by the judgment Ex.A/1 and therein, it was noticed that the alleged eyewitness Shahadat Ali had stated that the accident was caused by a Gypsy and the criminal court has observed that while one witness stated the accident having been caused by a jeep, another alleged it to be an Ambassador car, and yet another would assert it to be a Gypsy and hence, identity of the vehicle causing accident was

not certain. The learned Judge has observed that herein too, position was the same, i.e. the identity of the offending vehicle cannot be confirmed.

The learned Judge has further observed that the police after investigation found on the basis of FSL report that the accident was caused by the jeep in question. Then, noticing with reference to the seizure memo Ex.4 that the jeep was taken in possession by the police on 09.07.1992 and from the MTO report Ex.7 that the jeep was examined on 05.12.1991, the learned Judge has observed that it was not clear if the police had requisitioned the vehicle for examination before taking it in possession? The learned Judge has also noticed that the Investigating Officer has not been produced in evidence and he was not examined even before the criminal court and FSL report was also not produced and, therefore, the basis of filing of charge-sheet was not available on record.

In the above mentioned view of the matter, the learned Judge has concluded in issue No. 1 that it was not established that the accident was caused by the negligence of the non-applicant No.1 from the questioned jeep RNQ 4285.

Taking up quantification of compensation, with reference to the claim averments and claimants' evidence, the learned Judge has taken the monthly income of the deceased at Rs.2,400/- and dependency of the claimants at Rs.1,600/- per

month and with application of multiplier of 16 has assessed pecuniary loss at Rs.3,00,000/-; and with addition of other components has found total loss at Rs.3,25,000/-. The learned Judge has further observed that the claimants have caused delay in getting the non-applicants served and in leading evidence, therefore, they would be entitled for interest at the rate of 12% per annum from 19.08.1998, the date when they adduced evidence. However, in view of the finding on issue No.1 the claim application has been rejected.

Assailing the award aforesaid, it has been strenuously contended by learned counsel Mr.Rajesh Panwar appearing for the claimant-appellants that the Tribunal has been in error in placing reliance upon the testimony of DW-2 Indra Prakash who is alleged to have lodged first information report more than 12 hours after the occurrence; and that a scrutiny of the statement of DW-2 would show that his was a concocted story and the facts stated by him do not tally with the facts stated in the charge-sheet Ex.1 and other surrounding circumstances. Learned counsel further contended that the Tribunal has been in error in not relying upon the testimony of PW-2 Ablid Ali and PW-3 Iqbal Khan and merely referring to certain irrelevant contradictions in their statements. Learned counsel urged that the Tribunal has acted wholly illegally in relying upon the decision of the criminal court acquitting the jeep driver and in

not considering that such a decision by the criminal court was neither binding nor relevant for determination of the questions relating to responsibility towards the incident by the Tribunal. Learned counsel submitted that the claimants have established that the jeep in question caused the accident and award of compensation ought to have been made against the non-applicants. Learned counsel further submitted that the Tribunal has been in error in quantifying compensation at a meager amount of Rs.3,25,000/- and in observing that the claimants are not to be awarded interest from the date of filing of claim application.

Per contra, learned counsel Mr.Varun Goyal appearing for the non-applicants emphatically submitted that the claimants in this case have utterly failed to establish any involvement of the vehicle of the non-applicants in the accident in question. Learned counsel pointed out various loopholes in the case of the claimants like: (a) PW-3 Iqbal Khan has not been cited as a police witness and his testimony is not compatible with the police record; (b) PW-2 Abid Ali had given out different registration numbers of the alleged offending vehicle at different places; (c) the claimants have not examined another alleged eye witness Shahadat Ali in evidence; (d) different versions have come on record about the condition of the victim after the accident, some witnesses

stated him to have expired on the spot, while according to the others, he was lying unconscious. Learned counsel submitted that the non-applicant No.1 has been duly acquitted in criminal case after trial and it has been found that the so-called eyewitnesses came out with different versions about the identity of the vehicle where one stated it to be a car, another stated it to be a Gypsy, and yet another stated it to be a jeep. Learned counsel further submitted that the story sought to be suggested by the claimants' witnesses that the jeep came back after hitting the Luna rider and thereupon registration number of the vehicle were noted down, cannot be accepted for there appears no reason why the jeep driver would bring the vehicle back and then run way? Learned counsel urged that in any case, it is apparent that none of the so-called eyewitnesses relied upon by the claimants lodged the first information report nor anyone gave out the registration number of the vehicle and the non-applicants were proceeded against on mere suspicion. Learned counsel maintained that the Tribunal has rightly rejected the claim application after proper and thorough appreciation of evidence and this appeal remains bereft of substance and deserves to be dismissed.

Submissions of learned counsel for the parties have been given thoughtful and anxious consideration and the entire record has been scanned through.

The basic question in this case has been as to whether the jeep RNQ 4285 was involved in the accident as alleged by the claimants? While looking for answer to this intriguing, but core question, the learned Judge of Tribunal has of course endeavored to peep into the heap of confusion created at all levels in this matter but after noticing that the evidence on record gives rise more to questions rather than supplying answers; and perhaps exasperated over a perplexing and rather chaotic record that is more of a riddle, the learned Judge has merely pronounced the questions remaining answered and then, has brought the matter down to finale by choosing the soft, but invalid, option of relying upon the fact that the criminal case ended in acquittal of the non-applicant No. 1. The appreciation of record by the learned Judge of Tribunal in this case has been rather sketchy and has fallen substantially short of the requirement of sifting the grain from the chaff and taking an overall comprehension of the matter after careful analysis of the facts and the surrounding circumstances; and such an approach has resulted in serious injustice. As shall be seen hereafter, there had been concentrated efforts in this matter to shield the offending driver and vehicle; however, in the cumulative effect of the facts and circumstances available on record, finding against the present

non-applicants for the responsibility towards the accident remains the only plausible answer.

A few undenied and a few undeniable facts deserve to be taken note of at the first. It is not in dispute that the victim Mohammed Ayub while riding his Luna moped on 14.11.1991 at about 9:15 p.m. near Kalpatru Cinema and Jodhpur Hospital met with an accident and sustained grievous injuries on being hit by a vehicle. Then, it is indisputable that on 14.11.1991 itself, the victim Mohammed Ayub was admitted to Mahatma Gandhi Hospital, Jodhpur (referred as MGH) as per bed head ticket No.1266 I/E; and that, on 14.11.1991 only, he expired at 11:45 p.m. These facts about the date, time and particulars of his admission in MGH and demise are specifically stated in the postmortem report (Ex.8) made on 15.11.1991 at 12:15 p.m. Then, as per the facts stated in the charge-sheet filed in this matter (Ex. 1), the victim was taken to MGH from the site of incident by the Sub-Inspector Karan Singh of Police Station Shastri Nagar, Jodhpur who reached the site after a telephonic information was received at the police station at 9:50 p.m. According to the charge sheet, the victim was taken to MGH unconscious and hence his statements could not be recorded and nobody else gave out any information about the incident at the site; and, again according to the charge sheet, all these facts were duly

recorded by the Sub-Inspector Karan Singh in daily journal at the said police station.

Having examined the record of case thoroughly, this Court finds that taking advantage of the fact that the offending vehicle was not found at the site and that nobody else insisted to lodge the first information report, the efforts to shield the culprit were taken up by manipulations, particularly because the victim died within 2-3 hours of the incident. Despite the occurrence having immediately been reported to the police; despite the SI having reached the site soon after the incident; despite the SI having immediately taken the victim to the emergency ward of the government hospital; and despite these facts having otherwise been recorded by the SI after coming back to the police station, the FIR was not registered. And then, the next day a story was cooked up; and quite methodically, by putting forward a false first informant!

The present one is a case peculiar with the facts that by creating a false eyewitness-cum-informant, the incident has been sought to be given a different look, shape, and colour. The learned Judge of Tribunal has commented that although there were some contradictions in the statements of the first informant DW-2 Indra Prakash yet, this much was certain that in the first information report, accident was stated to have been caused by an Ambassador car whereas the offending

vehicle alleged herein was a jeep. However, the learned judge has failed to consider the material circumstance that it is the said first informant alone, and nobody else, who maintained that the offending vehicle was an Ambassador car. The other witnesses maintained that it were not a car; and further stated that it were a jeep with registration number RNQ 4285!

The learned Judge has been in error in not considering that merely for being the first informant, the testimony of the witness Inder Prakash does not become unimpeachable or beyond scrutiny. The fundamental fault in the approach of the learned judge of the Tribunal has been in overlooking the possibility that in the given fact situation of the case, such first informant could be created to conceal the truth. A simple scrutiny of the statements of DW-2 Indra Prakash is sufficient to show that he is a witness wholly unreliable and has been created solely for the purpose of misdirecting the entire consideration.

According to the said witness DW-2 Indra Prakash, he was an employee at Jodhpur Hospital and had seen the accident standing at the gate of the said hospital. He has alleged having taken Lunawala (the victim) to hospital (Jodhpur Hospital) and having informed the police on telephone. In the charge sheet (Ex.1) it has distinctly been mentioned that telephonic information was received at the

police station at 9:50 p.m. that an accident had occurred near Jodhpur Hospital and a person bleeding was lying on the road; and that the informant disconnected upon asking of his name and address. As already noticed, the victim Mohammed Ayub was picked up from the site by the SI Karan Singh and was got admitted in the emergency ward of MGH where he expired at 11:45 p.m. However, according to DW-2 Indra Prakash, he got admitted the victim to JHRC Hospital (not MGH) where Narendra Yadav treated him for about 1-1½ hours; that the mother of the victim was admitted in the same hospital; that the police did not come in the night and came only in the morning at 10-10:30 a.m.; that the victim died after 1½ hours in the hospital; and that before arrival of the police, the victim's family had already taken the dead body home. He has also stated that he made the phone call to the police from the hospital and informed that he was calling from Jodhpur Hospital and had also given out his name. The narration of this witness stands directly at loggerheads with official record. If the statement of this witness be accepted, then the facts stated in the charge sheet (Ex.1) and so also the facts stated in the postmortem report (Ex.8) are required to be rejected as false; and there appears no reason to believe that the medical jurist conducting the postmortem on 15.11.1991 would state a wrong fact in the postmortem report about bed head ticket of

the victim at MGH (1266 1/E dated 14.11.1991) and of his having expired at 11.45 p.m. at MGH. Then, the investigating agency would also be false in stating that the telephone informant did not state his name and that SI Karan Singh picked the victim up from the site and got him admitted to the government hospital in emergency ward.

The relevant part of the statement of DW-2 Indra Prakash and that of the charge sheet Ex.1 could usefully be placed in juxtaposition thus:

Statement of DW-2 Indra Prakash	Challan Ex. 1
दुघर्टना के 5 मिनट बाद अस्पताल से फोन पुलिस को किया था। मैं उसे JHRC अस्पताल में ले गया था। नरेन्द्र यादव ने इलाज किया था। घन्टा डेढ घन्टा इलाज चला था। मरा उसकी माताजी अस्पताल में भर्ती थी। पुलिस सुबह 10-10.30 बजे आई थी रात में नहीं आई। पुलिस आई तब तीसरी मन्जिल पर कपड़े धो रहा था। एक तारा वाला अधिकारी व दो सिपाही आये थे।टेलीफोन पर बता दिया था कि जोधपुर अस्पताल से बोल रहा हूँ नाम मेरा भी बता दिया था । 1-1/2 घन्टे बाद लूना वाला अस्पताल में मर गया था। पुलिस आई उससे पहले ही लाश घर वाले ले जा चूके थे। उसकी माताजी JMRC अस्पताल में भर्ती थी। दोनों अस्पताल जोधपुर अस्पताल के भाग है। उसकी पत्नि व दो-चार आदमी अस्पताल आये जो लाश रात में ही ले गये थे।"	श्रीमानजी निवेदन है कि थाना शास्त्रीनगर पर दिनाँक 14.11.91 वक्त 9.50 Pm पर जरिये टेलीफोन सूचना मिली कि जोधपुर अस्पताल के पास एक्सीडेन्ट हो गया है एक व्यक्ति सड़क पर पडा है जिसके खून बह रहा है नाम पता पूछने पर टेलीफोन रख दिया वगैरा सूचना पर थाना से S.I. करणसिंह मय जाब्ता के मौका पर गये, करणसिंह द्वारा वापसी पर रोज.आम में वक्त 12.30Pm पर दर्ज किया कि माफिक ईतला जोधपुर होस्पीटल पहुचा जहाँ एक व्यक्ति सडक पर पड़ा हुआ था शरीर से खुन निकल रहा था जो बेहोश को MGH ईलाज हेतु अमरजैन्सी वार्ड में भर्ती करा बेहाश होने के कारण बयान नहीं लिए जा सके नाहि घटनास्थल पर घटना सम्बन्धी कोई भी बात किसी व्यक्ति ने नहीं बतायी मजरूब के होश में आने पर बयान कलमबद्ध होंगे, Fc गोदीलाल को मौका की सुरक्षा हेतु घटनास्थल को रवाना किया।

A simple comparison of the statement of DW-2 Indra Prakash, the alleged first informant with the facts specifically

stated in the charge sheet is sufficient to show their incongruity, and necessarily, the testimony of DW-2 is required to be rejected being contradicted by the official record.

It may be pointed out that the fact if the victim was taken to the nearby hospital immediately after the incident has created maximum of disconcertment in the present case. Not only DW-2 Indra Prakash stated so but the claimants' witness PW-3 Iqbal Khan has also stated this fact. A possibility that the victim might have been taken to nearby hospital cannot be ruled out but then it appears that the concerned police officer reached at the scene of incident and immediately took the victim to the Government Hospital. Unless it were so, as noticed, the record of the Government Hospital would stand falsified and there appears no reason to take such a view.

The testimony of DW-2 Indra Prakash even otherwise does not inspire confidence because his overall conduct is not free from doubt. He has stated that he was working in Jodhpur Hospital as an office boy at a salary of Rs.400/- per month and was working for 12 hours, from 7 a.m. to 7 p.m. The incident in question occurred at 9:15 p.m. on 14.11.1991. On being questioned, he has stated being on duty in the hospital (Jodhpur Hospital) for the whole night. Then, according to him, police came in the morning (next day) at about 10:00 a.m. and he was in the hospital till 12:00 noon. Even if it be accepted

that he was on duty at 9:15 p.m. on 14.11.1991, it sounds rather improbable that in continuation of night duty, he was on duty next morning too and was washing clothes at the second floor of Jodhpur Hospital when the police came on 15.11.1991 at about 10:00 a.m. Then, the story of mother of the victim being admitted in the Jodhpur Hospital and so also the fact that victim expired at Jodhpur Hospital is neither corroborated by any record nor could be believed. Moreover, if the victim was treated at Jodhpur Hospital and expired thereat and his dead body had been taken home by the relatives from the Jodhpur Hospital itself, the very record of the Government Hospital (MGH) that the victim was admitted on 14.11.1991 at Bed Head Ticket No.1266 I/E and expired at 11.45 p.m. would be falsified. There appears no reason to discredit the record of MGH. Yet further, if it were a medico-legal case due to a road accident and victim had died at a private hospital, the onus would shift upon the management of the said hospital of having not informed the police. It appears that DW-2 Indra Prakash in order to over-assert himself has proceeded to develop chapters after chapters in his story, oblivious of the fact that all his assertions were standing at contradistinction with official record. This Court is clearly of opinion that the testimony of DW-2 deserves to be rejected as being utter falsehood. It cannot be concluded, even cannot be inferred, on

the basis of the statement of DW-2 Indra Prakash that the offending vehicle was an Ambassador car

It may be pointed out that a certified copy of the statement of DW-2 Indra Prakash as made before the criminal court has been produced before the Tribunal by none other than the non-applicants on 26.09.2000 alongwith certified copies of the judgment dated 11.05.1999 (marked as Ex. A/1) and of the statements of Abid Ali (marked as Ex. A/2). Although the said certified copy of statement of Indra Prakash before the criminal court has not been marked exhibit as such yet, it remains an undeniable document so far the non-applicants are concerned. A simple, but prominent, fact is required to be pointed out from the said certified copy of the statement of Indra Prakash that though he appeared as a prosecution witness in the said criminal case , he was not cross-examined at all and it has been specifically mentioned that his cross-examination by the accused (present non-applicant No. 1) was “Nil”.

The accused in the said criminal case, that is the non-applicant No.1 herein, was perfectly right in not cross-examining the said witness, who was none other than the first informant, because his testimony was precisely in support of the case of the accused; and not of the prosecution! However, unfortunately, such and other maneuvering where the

prosecution was rather more than keen to ensure acquittal of the accused has escaped the attention of the criminal court who has cursorily proceeded to extended benefit of doubt to the non-applicant No.1; and, more unfortunately, has escaped the notice of the learned judge of the Tribunal too.

The judgment delivered by the criminal court was neither binding on the Tribunal nor could have been taken conclusive in proof of any fact except that the prosecution resulted in acquittal of the non-applicant No.1. However, as noticed above, in the tangle of the puzzles and the questions arising in this case the learned Judge of Tribunal has chosen to rely on the fact that the jeep driver had been acquitted by the criminal court; and abruptly concluded that the claimants have not been able to establish involvement of questioned vehicle in the accident. Though ordinarily the judgment of criminal court would not have been examined in detail but in the peculiar circumstances of this case where the learned Judge of the Tribunal has proceeded to rely upon the said decision for reaching the conclusion on issue No.1, a few salient features distinctly available from the said judgment Ex.A/1 read with the charge sheet Ex.1 deserve to be taken note of.

It is noticeable from the charge sheet that though the FIR was lodged alleging the accident having been caused by

an Ambassador car, but after thorough investigation and taking statements of substantial number of witnesses; and then, after taking forensic science laboratory (FSL) report related with the parts of the jeep and the moped in question, the investigating agency found the case having been made out against the non-applicant Narendra Singh, driver of the jeep RNQ 4285. Umpteen number of documents were filed along with the charge sheet and 28 witnesses were cited including ten police personnel like the two drawing MTO reports concerning the two vehicles (moped and jeep), one related with seizure of jeep paint, three related with depositing the articles to FSL and bringing its report, one related with the seizure of jeep, and three related with institution of the case, investigation and filing of charge sheet. They were apart from the eyewitnesses, the first informant and the others like attesting witnesses, the doctor, the mechanic, and the senior scientific officer of FSL, Jaipur. However, the prosecution of this matter had been conducted in the manner that neither any police personnel was examined before the court, nor any of the official witness was produced. The learned Additional Chief Judicial Magistrate No.1,Jodhpur has delivered a judgment running in three pages acquitting the accused but has noticed that the prosecution examined PW-1 Tayyab Ali (cited as a witness of inquest report of the dead body), PW-2

Indra Prakash (the first informant), PW-3 Shahadat Ali and PW-4 Abid Ali (the eyewitnesses), PW-5 Ravindra, (mechanic of the jeep in question) and PW-6 Moindeen (witness of the site inspection). Though it is not available in the said decision as to why no other witness was produced; and having regard to the subject matter of this appeal, this Court would prefer not to travel yet further in this regard; but this much is apparent that the prosecution did not put the requisite efforts to substantiate the charge against the non-applicant No.1. The learned Judge of the Tribunal has also noticed the fact that the investigating officer was not produced before the criminal court but has failed to visualize the significance of such omission. This court is satisfied that in this matter the so-called prosecution of the criminal case was nothing but a farce. The entire basis of filing charge sheet against the accused (non-applicant No. 1 herein) as driver of jeep RNQ 4285 was the FSL report; and for the reasons best known to them, the prosecution chose not to adduce relevant evidence in the trial of the criminal case. It is apparent that the decision of the criminal court (Ex. A/1) cannot even remotely be relied upon in favour of the non-applicants. On the contrary, after finding that the first informant was a cooked up witness and then noticing that the prosecution has been permitted to end in acquittal by not producing the relevant witnesses and not producing even

the FSL report that was the basis of filing charge-sheet against the accused, the said decision of the criminal case, if at all, indicate nothing but keenness of the prosecution to ensure acquittal of the accused. The learned Judge of the Tribunal has obviously been in absolute error in relying upon the said decision for deciding issue No.1 against the claimants.

The learned judge of the Tribunal has further observed that the jeep was shown having been seized on 09.07.1992 (Ex.4) whereas its MTO report was made on 05.12.1991 (Ex.7); and has found this to be another intriguing factor. It is not. A simple look at relevant facts would have made the position clear. As noticed, the initial report was recorded at the police station about the incident in the midnight of 14.11.1991 but offending vehicle was not identified; and then, next day, the FIR was registered where Indra Prakash stated involvement of an Ambassador car. Obviously, while conducting investigation on an FIR stating involvement of an Ambassador car, the jeep in question could not have been detained unless there was some basis or some material to do so. It appears that during the course of investigation, the involvement of the jeep in question came to the fore in the statements of eyewitnesses like Abid Ali and Shahadat Ali, and hence, the jeep was got examined on 05.12.1991. Then, it appears that paint of the jeep, parts of the jeep and parts of

the moped were taken by the police and they were sent for FSL report; and after receipt of FSL report, involvement of the jeep in question was concluded. These facts are discernible from the contents of the charge sheet Ex.1 that records,-

> "दौराने अनुसन्धान बयान ईन्द्रप्रकाश उर्फ प्रकाश के लेकर निरीक्षण घटनास्थल कर फर्दात हालात मौका व नक्शा नजरी, जब्ती लूणा मोपेड बिना नम्बरी, फर्द सूरत हाल लाश मृतक मौहम्मद अयूब, पंचनामा, मुर्तिब कर लाश का पोस्टमार्टम करवाया गया, बयान श्री मौहम्मद अजीज के लिए, P.M.R. प्राप्त की जिसमें M.O. सा. ने cause of death is Head Injury अंकित किया, लाश बाद पोस्टमार्टम के जरिये फर्द सुपर्दगीनामा वारिशान को सुपुर्द की गई। बयान हाबिद अली, शहादत अली मोहीदीन खां उर्फ एम.डी.खां, मनोहरसिंह व हरलाल राम के लिए गये। मुकदमा हाजा में लूना बिना नम्बरी व जीप RNQ 4285 का MTO मुआयना करवा कर MTO रिपोर्ट प्राप्त की गई । FSL एक्सपर्ट श्री शैलेन्द्र झा से जीप नम्बर RNQ 4285 व लूणा मोपेड का इन्सपेक्शन करवा कर रिपोर्ट इन्सपेक्शन मय नो फोटोग्राफ प्राप्त किये गये। जरिये फर्द जब्ती पेन्ट जीप RNQ 4285 व फर्द जब्ती लूणा व जीप RNQ 4285 के दोनों मडगार्ड व बम्बर को वास्ते परिक्षण हेतु FSL एक्सपर्ट राज. जयपुर भिजवाये जिसकी <u>FSL रिपोर्ट प्राप्त हुई। जिसके मुताबिक जीप RNQ 4285 के द्वारा यह ऐक्सीडेन्ट होना पाया गया.</u> MV एक्ट का नोटिस जीप RNQ 4285 बाबत तामील करवाया जीप RNQ 4285 को जरिये फर्द वास्ते वजह सबूत जब्त किया मुकदमा हाजा में जीप चालक नरेन्द्रसिंह S/o छतरसिंह भाटी राजपूत उम्र 26 साल नि0 B-63 शास्त्रीनगर जोधपुर जो बरजमानत मुचलका पर आजाद है।"
>
> (emphasis supplied)

A simple examination of the material available on record would have made it clear that in the peculiar facts of this case, seizure of the jeep would have come about only upon receipt of the FSL report, and not before. The learned Judge has

failed to notice the list of documents stated at the charge-sheet Ex.1 wherein, apart from other relevant documents, there are mentioned the documents of,

> "फर्द जब्ती पेन्ट जीप RNQ 4285, फर्द जब्ती लूणा पार्ट, फर्द जब्ती जीप के पार्ट, FSL में माल जमा कराने का फोरवडिंग लेटर S.P. Office, FSL रिपोर्ट नकल, रपट रोज. आम दि. 14.11.91.''

It is clear that for the purpose of investigation, the jeep was examined in the first place but to ensure its involvement with the moped in question, its paint and parts and so also the parts of the moped were sent for FSL report. The learned judge has not noticed the fact that the jeep was seized on 09.07.1992 at 1:30 p.m. and immediately the next day, i.e. 10.07.1992 charge sheet was filed. Obviously, the entire investigation was already complete and with the report of FSL, filing of charge sheet was the only option available with the investigating agency. The question about the sequence of events, of MTO report of the jeep and its seizure, has obviously been raised by the learned Judge without examining peculiar facts of the case and so also the material directly available on record.

Before proceeding further, it shall be worthwhile to notice the gist of the discussion aforesaid that: (a) the testimony of DW-2 Indra Prakash relied upon by the learned

Judge of the Tribunal is required to be rejected altogether; (b) the effect of judgment Ex.A/1 delivered by the criminal court is also required to be rejected altogether, and if anything, it fortifies the fact that prosecution of the non-applicant No. 1 was reduced to farce and was deliberately permitted to end in acquittal; (c) non-production of the Investigating Officer in this case, if at all of any inference, goes against the non-applicants for his having not appeared in criminal case either; (d) chronology of mechanical inspection of the jeep (on 05.12.1991) and its seizure (on 09.07.1992) was the natural consequence of the peculiar facts of the case where involvement of jeep could not have been concluded by the investigating agency till receipt of the FSL report.

Taking up the case of the claimants it is noticed that they have examined three witnesses in support. PW-1 Shahnaj Bano, the wife of the deceased was not available at the site and seems to have been informed about the demise of Mohammed Ayub much later as she has stated that he battled for life for 12 hours. Her statements are of no relevance on the question of involvement of the vehicle. PW-3 Iqbal Khan, examined as an eyewitness by the claimants, was not cited as a witness in the charge sheet filed against the non-applicant No. 1. He has stated having visited Jodhpur Hospital with his friend to call upon his relative and they were fetching

medicines when he saw a jeep coming rashly and negligently from the side of Residency Road towards Kalpataru Cinema; the jeep hit the Luna rider going on his side towards Residency Road; Luna rider fell down; jeep went ahead and came back and noticing the moped rider lying on the road, the jeep driver sped away; and he saw the registration number of the jeep RNQ 4285. He has further stated that several people gathered at the site and he and his friend too went there; Lunawalla had fallen unconscious who was taken to the hospital nearby where the doctors declared him dead; that he came to know about the name of the deceased next day; that the accident occurred for the mistake of the jeep driver whose name Narendra Singh came to his knowledge two-three days later. In cross-examination, he has stated that he was not knowing the name of jeep driver before and came to know about the name from his friend who was the relative of the deceased; he was not aware as to who informed the police; and his statements were not recorded in the criminal case. He has denied the suggestions of his deposing at the instance of the relatives of the deceased or that an Ambassador car caused the accident.

Testimony of this witness PW-3 Iqbal Khan creates more confusion rather than proving anything. His assertion of presence at the scene and having seen the incident and

having noted the numbers of the jeep does not inspire much confidence particularly when viewed in the light of the fact that he has stated the victim having been taken to the nearby hospital where the doctors declared him dead. As already noticed, the victim was got admitted to the emergency ward of the general hospital by the SI Karan Singh. This witness Iqbal Khan has not been cited as a police witness and his statements are also largely incompatible with official record. While looking at the preponderance of evidence, it appears reasonable to reject the testimony of this witness Iqbal Khan.

The witness Abid Ali, PW-2 has been produced by the claimants as an eyewitness to the incident and he has been cited as prosecution witness and deposed in the criminal case too. He has stated that he was dealing in car radiators and had gone to Laldas buswalla on 14.11.1991; that after meeting Laldas while he was going towards Residency Road from Kalpatru Cinema on bicycle he saw the jeep coming from Residency Road wavering and in brisk speed that hit Ayub Khan going on Luna on his side and Ayub fell down; that the jeep came back and he noted down the numbers 'RMQ 8285'; that Ayub Khan died on the spot and a crowd gathered; that after noticing that Lunawalla was lying on the road the jeep driver sped off; and that the accident occurred for the negligence of the jeep driver Narendra Singh. In cross-

examination, he has denied the suggestion that the accident occurred from an Ambassador car. He has denied having deposed before the criminal court about his not knowing the jeep driver. He did not remember the date of recording of his statement by the police but stated that the same were taken about 10-12 days later. He has further stated that he did not know the name of Lunawalla at the time of incident and came to know the name later; and that he did not know the jeep driver earlier and came to know about his name only after attending one or two dates of hearing in the court; and that he (the jeep driver) had threatened him also. He has expressed having not made any complaint against such threatening in the words, 'to whom shall I make the complaint?' He has maintained that it were wrong if mentioned in the FIR that the accident occurred from an Ambassador car. According to him, the offending jeep was of pigeon colour. He has given out that the spot of incident was in front of the hospital situated opposite Kalpatru Cinema; that the hospital was behind Barkatulla Khan; that the accident occurred on the road leading to Residency Road between the hospital and Ravan-Ka-Chabutra; that the road was a dammar road but was uneven and the site of incident was about 250 feet from Residency Road; that he was going towards Residency Road

after passing in front of Kalpatru Cinema; that he had seen the oncoming jeep; and that the Lunawalla fell on the main road.

It may be pointed out that after closure of the evidence of the non-applicants, upon an application the claimants were permitted to re-examine this witness PW-2 Abid Ali for clarification of vehicle number. Upon further examination on 18.10.2000, he stated that the accident occurred from the jeep bearing number 'RNQ 4285' and the numbers were wrongly scribed in his statement as '8285'. In cross-examination, he stated that in his statements before the ACJM court too, he gave out the numbers of the jeep '4285' only; and that in the ACJM court he never stated the numbers 'RNJ 4285'. On being confronted with his statement in the criminal case, Ex.A/2, he stated that the portion marked A to B containing the letters 'RNJ' was wrong and that he had always stated the numbers of the jeep as 'RNQ 4285' and it must have been a scribing mistake.

Learned Judge of the Tribunal has found the statements of this witness Abid Ali shaky and unreliable for the reasons that he has given out different registration numbers of the vehicle in his statements in the criminal case and in this claim case; that according to him the victim died on the spot whereas according to PW-3 the victim was taken unconscious to the hospital were the doctors declared him dead; that it did

not appear probable that the jeep came back and he noted down the numbers of the jeep as he was proceeding in the opposite direction; and if at all it were so, he ought to have divulged the numbers immediately or the next day but he had not given out the numbers anywhere.

The considerations adopted by the learned Judge in doubting the testimony of the witness AW-2 Abid Ali cannot be approved. The shortcomings in the testimony of this witness are either too insignificant or too irrelevant to discredit him; and appear to be the natural consequence of deposition of a wholly uninterested witness. His statement in the criminal case (Ex. A/2) of course contains the registration number of the vehicle as 'RNJ 4285' but he has maintained that the accident occurred from a jeep and has denied the suggestion that it occurred from Ambassador car. Then, in his initial statement before the Tribunal also the identity of the vehicle was stated as that of a jeep and registration number of the jeep were recorded as 'RMQ 8285'. He has made the deposition again and stated that the correct number was '4285'. He has specifically stated in the cross-examination that he has always maintained that the number of the offending vehicle was 'RNQ 4285'.

It is required to be noticed that the said witness Abid Ali was only a passer-by and had no relationship with either of the

parties. There is no reason worth the name on record for which he could be considered a person making false deposition. While appreciating the testimony of such a chance witness it is required to be kept in view that the facts would be divulged and stated by him to the extent his memory would be able to retain; and mixing up of the English letters in the series of a vehicle's registration number is not a fatal flaw in such testimony. Moreover, his specific clarification in cross-examination removes any doubt about the identity and registration number of the vehicle, i.e., the jeep RNQ 4285.

The learned Judge has not been correct in commenting that if the numbers were noted by him, the same were not divulged at the earliest. The accident occurred on 14.11.1991 and the witness has stated that the police took his statements about 10-12 days later. Even in the criminal case statement (Ex. A/2) he stated that his statements (by the police) were taken about 10 or 15 days after the incident. The significant conjunction of the facts is that on 05.12.1991 the vehicle in question, the jeep RNQ 4285, was subjected to mechanical examination in relation to the investigation in the related CR No.291/91, P.S. Shastri Nagar (vide Ex. 7). Hence, within 20 days of the incident, the investigating agency had with it the requisite, even if primary, material to suspect involvement of the vehicle in question in the incident under investigation; and,

obviously, one such material was in the form of the statement of Abid Ali.

The fact asserted by Abid Ali that jeep driver brought the vehicle back to the spot cannot be dubbed as an impossibility as assumed by the learned Judge. The learned Judge has overlooked the fact that such roadside accidents usually do not occur premeditated; and are always sudden and shocking and happen in a split second cutting across the entire thought-process of any individual. Reaction to such a happening depends on variety of factors including psychic level of the person involved in the accident. In the happening of the present nature where a four-wheeler hits a moped on the road, but the four-wheeler driver is still in control of his own vehicle, he could halt the vehicle and come down, could continue with the same speed and in the same direction, could speed off full throttle on all cylinders, could leave the vehicle and ran away, could go berserk and cause a few more accidents, could even take the victim to hospital etc.etc. Out of the umpteen number of possibilities, the jeep driver in a split second drawing back to the scene of incident in his vehicle and in another split second preferring to speed off cannot be ruled out. The doubt raised by the learned Judge that the jeep coming back was not a reasonable probability does not sound valid or correct. The facts stated by the witness Abid Ali of the jeep having come

back and in the process his having noted down the numbers cannot be rejected as those of some impossibility.

Whether the victim died on the spot or only fell unconscious is definitely difficult for a by-stander to make out and nothing adverse could be deduced nor any fault could be attributed when PW-2 Abid Ali stated that the victim died on the spot. The victim nevertheless sustained grievous injuries and never spoke to anybody after the incident. Then, the witness Abid Ali was not the person who removed the victim to hospital and nothing much turns upon the fact if he stated about the victim having perished on the spot. What he has maintained is that the jeep driver came back and noticing the moped rider lying flat on the road, sped off.

In the overall facts and circumstances of this case, this court is of opinion that the testimony of PW-2 Abid Ali cannot be rejected as bogus or entirely untruthful; and could reasonably be relied upon to find answers to the intriguing questions involved in this case.

An omission on the part of the claimants of not examining Shahadat Ali in evidence cannot go unnoticed. It remains definitely a lacuna in the case of the claimants that they specifically stated in the claim application that Shahadat Ali was the eyewitness and he was the person who extended the information to the police. In view of the averments taken in

the claim application, it cannot be denied that Shahadat Ali was relevant witness in the case and not examining him in evidence has been of a weakness in the case of the claimants. But, he being not directly related to the claimants, no adverse inference can be drawn against the claimants on that count. The proposition of drawing adverse inference per illustration (g) to Section 114 of the Evidence Act could be adopted only when the party concerned could have produced a particular evidence and withholds the same. The present one does not appear to be a case where the claimants could be said to be in a position to produce Shahadat Ali or that they intentionally withheld him. Non-production of Shahadat Ali could only operate against the claimants to the extent that they have not been able to establish that Shahadat Ali had seen the incident and had informed the police. However, that is not, and that cannot be conclusive of the matter. As noticed, the facts established in reliable testimony of PW-2 Abid Ali cannot be ignored.

So far the stand of the non-applicants is concerned, as already discussed, testimony of their star witness DW-2 Indra Prakash is not trustworthy and is required to be rejected. An examination of the statement of blanket denial of incident, as made by DW-1 Narendra Singh reveals that admittedly the jeep was of the ownership of his elder brother Mahipal Singh

but he (Narendra Singh) was regularly driving the same. He was not aware of the location of the jeep on 09.07.1992, the date of seizure; but stated that upon receiving telephone from the police station, his father had taken the jeep to the police station. However, the fact that jeep parts and paint samples were taken by the police for FSL report has consciously been omitted from mention. On the whole, from the statement of DW-1 Narendra Singh this much is certain that he was regularly driving the said jeep No.RNQ 4285 that was of the ownership of his brother. Other facts have been avoided by him and directed towards his father.

Then, father of the non-applicants who allegedly took the vehicle to the police station has not been produced in evidence. Significantly, the vehicle owner, non-applicant No. 2, has also not appeared in evidence. Now in the case of non-applicants, there definitely arise an adverse inference for not producing relevant witnesses; who are none other than the vehicle owner himself (non-applicant No.2); and so also the father of the non-applicants who is said to have dealt with the vehicle in question and had allegedly taken the same to the Police Station. There is no reason forthcoming on record for not examining these two directly relevant and related persons.

It is to be imbibed that in a vehicular accident claim case, standard and nature of proof cannot be taken to the level of proof requisite for substantiating a criminal charge. It is only the reasonable preponderance of probabilities that is required to be considered and not as if searching for complete chain of circumstantial evidence before returning a verdict of guilt against an accused. When basic facts about the incident that Mohammad Ayub was hit by a vehicle on 14.11.1991 at about 09:15 p.m. in front of Kalpatru Cinema remain undeniable; when connecting facts about his removal from the site to government hospital by the police and about his demise at the government hospital due to the injuries sustained in the accident are taken from the contents of charge-sheet filed by the investigating agency (Ex. 1) and from the post mortem report (Ex. 3); when further facts that though the first information report dated 15.11.1991 stated about the victim having been hit by an Ambassador car, yet the investigating agency examined the jeep in question on 05.12.1991 and collected samples from the body of jeep for FSL examination are taken into consideration; when indication from yet another fact that charge sheet was filed against the non-applicant No. 1 after receipt of FSL report on the same FIR is kept in view; when the judgment in criminal case indicate that the prosecution did not examine any one of the material witnesses

including the police personnel and the scientific officer of FSL; when it is found that the first informant was nothing but a cooked-up witness; when adverse inference is drawn against the non-applicants for withholding relevant witnesses including their father and the vehicle owner (non-applicant No. 2); and when the testimony of claimants' witness PW-2 Abid Ali is found reliable, preponderance of probabilities definately leans in favour of the claimants and in favour of the finding that the accident in question causing fatal injuries to Mohammed Ayub did occur from the jeep bearing registration number RNQ 4248 belonging to the non-applicant No.2 and driven by non-applicant No.1.

Accordingly, finding on issue No. 1 is reversed and it is held that the fatal accident leading to demise of Mohammed Ayub did occur from the jeep in question RNQ 4285; and the non-applicants remain liable for compensation as driver and owner thereof.

Of course when the accident occurred for head-on collision of two on-coming vehicles on the road, the aspect of contributory negligence of deceased could have been considered but when the non-applicants have denied the involvement of their jeep altogether and such assertion has not been accepted; and there is no other evidence on record to find if the deceased in any manner contributed to the accident

and his injuries, this court is of opinion that in the fact situation of the present case, the non-applicants alone are to be blamed for omission of care on the part of the non-applicant No. 1 and, thus, remain fully liable for the loss caused to the claimants.

So far quantum of compensation is concerned, it is noticed from the evidence produced on record that the deceased was engaged in the business of footwear and was managing different establishments. The claimant No.1 has asserted his contribution to the family at about Rs.3,000/- per month. She has not been cross-examined on the aspects of the income of and contribution by the deceased. However, having regard to the circumstances of the case and particularly the fact that income of the deceased was essentially coming from the business of trading in footwear, a part of business income retaining itself to the claimants cannot be ruled out. The estimate put by the Tribunal in taking the average income of the deceased at Rs.2,400/- per month and while deducting one-third wherefrom, taking loss of contribution at Rs.1,600/- per month appears proper and reasonable. The deceased was about 35 years in age and having regard to the circumstances of the case, application of multiplier of 16 appears appropriate. However, on this calculation, pecuniary loss comes to Rs.3,07,200/- (1600 x 12 x 16) and not Rs.3,00,000/- as assessed by the Tribunal. Then, wife of the

deceased deserves to be allowed Rs.10,000/- towards loss of consortium and the claimants Nos.2 to 4 Rs.5,000/- each towards loss of love, affection and guidance of their father. Parents of the deceased have expired during the pendency of this appeal hence no part of compensation is being considered in their relation. A further amount of Rs.2,000/- deserves to be allowed towards funeral expenses. Thus, there appears no reason to deprive the claimants of an amount of Rs.3,34,200/- (3,07,200/- + 10,000/- + 15,000/- + 2,000) minimum as compensation for the loss suffered by them.

It may be pointed out that in this case the Tribunal made an award under Section 140 of the Motor Vehicles Act for interim compensation on 21.08.1996 in favour of the claimants in the sum of Rs.50,000/-. However, the record does not show such amount having been paid by the non-applicants and having been disbursed to the claimants. Therefore, no directions are made in this award for adjustment of the said amount of interim award. However, if the non-applicants have paid such amount, they would, of course, be entitled for adjustment thereof.

So far awarding of interest is concerned, the Tribunal has proceeded to observe that the claimants have delayed disposal of claim application by not filing process fees and notices within time and then not producing evidence despite

repeated opportunities and, therefore, has held them entitled for interest at the rate of 12% per annum from 19.08.1998. The proposition of depriving the claimants of interest on the award amount for about six years before leading of evidence cannot be said to be a valid exercise of discretion and there appears no justification for depriving the claimants of reasonable rate of interest from the date of filing of claim application. This court is of opinion that ordinarily, in a vehicular accident claim case, the claimant is entitled for interest on the award amount from the date of filing of the claim application as envisaged by Section 171 of the Motor Vehicles Act and such component of interest should not be denied unless the claimant could be said to have intentionally delayed the disposal of the claim application. There being no such attempt on the part of the claimants to intentionally elongate the matter, they deserve to be allowed reasonable interest from the date of filing of claim application. However, the Tribunal has suggested awarding of interest from 19.08.1998 at a comparatively higher rate of 12% per annum and having regard to the period of litigation and prevalent rates of interest, this Court is of opinion that it shall be appropriate if the claimants are allowed interest from the date of filing of claim application at the rate of 7.5% per annum.

As a result of the aforesaid, this appeal succeeds and is allowed. The impugned award dated 30.10.2000 is set aside and the claim application submitted by the claimants is partly allowed; the claimants are awarded compensation in the sum of Rs.3,34,200/- with interest at the rate of 7.5% per annum from the date of filing of claim application. The amount of interim compensation if paid by the non-applicants shall be adjusted in the amount payable to the claimants.

It shall be required of the non-applicants to deposit the amount payable under this award within 30 days from today with the Tribunal. Upon deposit, the Tribunal shall make apportionment of the award amount in the manner that wife of the deceased shall be entitled to 40% of the amount of award and sons of the deceased, claimants Nos.2 to 4 shall be entitled to 20% each. Of the amount payable to each of the claimants, 25% may be disbursed in cash and remaining 75% be placed in a Monthly Income Scheme of Post Office for a period of five years with the respective claimant being entitled to receive periodical interest thereupon. The claimants shall also be entitled to the costs of litigation from the non-applicants quantified at Rs.4,000/-.

(DINESH MAHESHWARI),J.

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